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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/501,716	02/10/2000	Kazuichi Ooe	1046.1209/JDH	4289
21171	7590	10/17/2006	EXAMINER	
STAAS & HALSEY LLP SUITE 700 1201 NEW YORK AVENUE, N.W. WASHINGTON, DC 20005			TSEGAYE, SABA	
			ART UNIT	PAPER NUMBER
			2616	

DATE MAILED: 10/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.		Applicant(s)	
	09/501,716		OOE, KAZUICHI	
	Examiner		Art Unit	
	Saba Tsegaye		2616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 2, 6 and 8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 6 and 8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. This Office Action is in response to the amendment filed 07/21/06. Claims 1, 2, 6 and 8 are pending. Currently no claims are in condition for allowance.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 2, 6 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reynolds (US 5,742,499).

Regarding claims 1, 2 and 6, Reynolds discloses a communications method of performing communications by switching over a plurality of communication modes (a method for selecting one communication mode from a plurality of communication modes), comprising:

measuring a communication performance between a plurality of communication devices connected to a network by measuring a communication time of each of the communication modes of one of the communication devices under a plurality of communication conditions (a particular operation employing a selected communication mode within a multimode computer system; selecting an optimal communications mode at operation run-time. See abstract; column 5, lines 11-46);

obtaining a condition-based optimum communication mode in which the communication time in one of the communication modes of the one of the communication devices, exceeds a communication time of other communication mode per communication condition of the one of the communication devices (see fig 4; steps 409-411; column 8, lines 31-45);

selecting the condition-based optimum communication mode in accordance with the communication condition when in communications, and thus performing the communications between the communication devices based on the condition based optimum communication mode of the one of the communication devices (see fig 4; steps 409-416; column 8, lines 31-59).

Reynolds, however, does not disclose a communications method that comprises a version of the operating system.

Reynolds discloses selecting a mode of communication from a plurality of modes of communication for performing **a plurality of operations** so as to optimize a performance characteristic of **a multi-node** computer system; and performing the particular operation within the multi-node computer system using the selected mode of communication. Each particular operation requires communication among the nodes. Each operation requires the use of a communication mode (for example broadcast; scatter operation). The broadcast operation requires the distribution of a message to a plurality of nodes. The scatter operation distributes a message only to a certain numbers of nodes.

As known, difficulties arise when a transmitter to send a data packet to receivers using a different version of an operating system. It is also known that to perform compatibility checking, the transmitter and the receivers exchange their software numbers. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a version of

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an operating system of the communication devices (nodes) in the broadcasting system of Reynolds in order to increase transmission speed by checking compatibility between the transmitter and the receivers.

Regarding claim 8, Reynolds discloses a communications device further comprising; a storage unit storing the condition-based optimum communication mode (column 8, lines 15-30),

wherein the performance measuring module measures the communication performance in the communications with other communications device if not stored with the condition-based optimum communication mode in the communications with the other communications device when performing the communications with the other communications device (column 8, line 15-33), and

the optimum mode-obtaining module obtains the condition-based optimum communication mode (column 8, line 15-33).

Response to Arguments

4. Applicant's arguments with respect to claims 1, 2, 6 and 8 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Saba Tsegaye whose telephone number is (571) 272-3091. The examiner can normally be reached on Monday-Friday (7:30-5:00), First Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Doris To can be reached on (571) 272-7629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ST

October 12, 2006



DORIS H. TO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600